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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/724,685

11/28/2000

Steven G. Reed

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12/02/2009

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EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

MAIL DATE

DELIVERY MODE

12/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/724,685	<b>Applicant(s)</b> REED ET AL.	
	<b>Examiner</b> Rodney P. Swartz, Ph.D.	<b>Art Unit</b> 1645	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37-41 and 56-86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37,39-41,56,58-60,69,72,74,75,18,81,83,84 is/are allowed.
- 6) ☒ Claim(s) 38,57,61-68,70,71,73,76,77,79,80,82,85 and 86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 12 October 2009, is acknowledged.

Claims 39, 58, 62, 63, 64, 66, 67, 72, 73, 74, 75, 76, 77, 81, 82, 83, 84, 85 and 86 have been amended.

2. Claims 37-41 and 56-86 are pending and under consideration.

### **Rejections Withdrawn**

3. The rejection of claims 39-41, 58-60, 62-64, 66-68, 72-77 and 81-86 under 35 U.S.C. 112, first paragraph, because the specification, scope of enablement for pharmaceutical compositions comprising polypeptide, is withdrawn in light of the amendment of the claims.

### **Rejections Maintained**

4. The rejection of claims 38, 57, 61-68, 70, 71, 73, 76, 77, 79, 80, 82, 85 and 86 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4 and 10-12 of U.S. Patent No. 7,186,412, is maintained.

The Terminal Disclaimer, received 12 October 2009, is disapproved because attorney not of record, see 37 CFR 1.32, MPEP 14.29 and 14.30.

5. The rejection of claims 38, 57, 61-68, 70, 71, 73, 76, 77, 79, 80, 82, 85 and 86 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,350,456, is maintained.

The Terminal Disclaimer, received 12 October 2009, is disapproved because attorney not of record, see 37 CFR 1.32, MPEP 14.29 and 14.30.

6. The rejection of claims 38, 57, 61-68, 70, 71, 73, 76, 77, 79, 80, 82, 85 and 86 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-9, 16, 21-23 of U.S. Patent No. 7,311,922, is maintained.

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The Terminal Disclaimer, received 12 October 2009, is disapproved because attorney not of record, see 37 CFR 1.32, MPEP 14.29 and 14.30.

### **Conclusion**

7. Claims 38, 57, 61-68, 70, 71, 73, 76, 77, 79, 80, 82, 85 and 86 are rejected.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Robert B. Mondesi (571)272-0956.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

December 2, 2009